

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1843 of 2016 and
C.M.P.No.13529 of 2016

Kannathasan .. Appellant/Respondent

Vs.

Senthil @ Senthilkumar ... Respondent/Claimant

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.03.2016 made in M.C.O.P.No.348 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Ariyalur.

For Appellant : Mr.S.Kamadevan

For Respondent : Mr.P.Parthi Kannan
for M/s.S.Kaithamalai Kumaran

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 05.03.2016 made in M.C.O.P.No.348 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Ariyalur.

2.The appellant is the respondent in M.C.O.P.No.348 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Ariyalur. The respondent filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 11.04.2010.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the appellant, owner-cum-rider of the motorcycle and directed the appellant to pay a sum of Rs.75,000/- as compensation to the respondent/claimant.

4.Challenging the said award dated 05.03.2016 made in M.C.O.P.No.348 of 2012 granting compensation to the respondent, the appellant/owner of the motorcycle has come out with the present appeal.

5.The learned counsel appearing for the appellant/owner of the motorcycle contended that the appellant has denied that he is the owner of the offending vehicle and he is liable to pay the compensation, by filing counter. The respondent has not taken any steps to identify and fix the actual owner of the vehicle and to prove the accident against the appellant. In the absence of any evidence, the Tribunal erred in fixing the liability on the appellant. Originally, the respondent has mentioned a different date of alleged accident and subsequently amended the date of accident as 11.04.2010. Hence, the finding of the Tribunal that the appellant is owner and he is responsible for the accident is perverse. The Tribunal failed to consider the contents of FIR wherein it has been stated that the accident has been caused by un-identified motorcycle/unknown motorcycle and there is a material alteration in the FIR. The Tribunal erred in relying on Ex.P6/newspaper cutting to fix the liability on the appellant. The said Ex.P6/newspaper cutting is not admissible in evidence and accordingly, he prayed for setting aside the award of the Tribunal.

6.Per Contra, the learned counsel appearing for the respondent contended that the Tribunal considering the evidence available on record, has rightly fastened the liability on the appellant and awarded the compensation, which is just and reasonable and required no interference. Hence, he prays for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the materials available on record.

8.From the materials on record it is seen that the respondent has alleged that when he was riding his bicycle with coal bag, the appellant rode the motorcycle in a rash and negligent manner, dashed against the bicycle and caused the accident. For the injuries sustained in the accident, the respondent claimed compensation. In the FIR, it has been stated that the accident has been caused by un-identified motorcycle/unknown motorcycle. But, subsequently, based on the newspaper cutting/ExP.6, the respondent obtained the accident register copy from the Government Hospital, Ariyalur, where the appellant was admitted for taking treatment and the said Accident Register Copy was marked as Ex.P9. In Ex.P9/Accident Register Copy filed by the respondent, it has been stated that due to Motorcycle dashing against the bicycle, the appellant sustained injuries. By producing Ex.P9, the respondent has proved that the appellant has dashed his motorcycle on the bicycle of respondent and caused the accident. The appellant totally denied his involvement in the accident and also as to owning offending motorcycle. The appellant has not examined any witness or official from RTO to prove that the motorcycle is owned by some third party and the appellant is not the owner. The contention of the learned counsel for the appellant that the respondent failed to prove that the appellant is

owner of the motorcycle, is without merits. When the appellant has come out with the specific case that he is not the owner of the motorcycle, he ought to have summoned the officials from RTO and proved his contentions. Considering the above materials especially the Ex.P9/Accident Register copy, I hold that there is no error in the finding of the Tribunal holding that the appellant only caused the accident and liable to pay compensation.

9.As far as the quantum of compensation is concerned, P.W.2/Dr.Kanmani was examined, who fixed the disability of the respondent/claimant at 14% and the Tribunal also accepted the 14% disability and awarded a sum of Rs.28,000/- (Rs.14 X Rs.2,000/-) towards disability. The income of the respondent is Rs.7,500/- per month by way of doing agricultural work and also doing coolie work. But, in the absence of any material evidence, the Tribunal took into consideration Rs.6,000/- per month as notional income and awarded Rs.6,000/- as loss of income for one month, Rs.10,000/- towards pain and suffering, Rs.3,000/- towards transport, Rs.3,000/- towards extra nourishment and Rs.25,000/- towards loss of amenities. There is no error in the award of the Tribunal warranting interference by this Court.

10.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.75,000/- awarded by the Tribunal as compensation to the respondent, along with interest and costs is hereby confirmed. The appellant/owner of the motorcycle is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.348 of 2012 before the Court below, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted to withdraw the award amount along with interest and costs, less the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Additional District & Sessions Judge,
Motor Accident Claims Tribunal,
Ariyalur.

<https://hcservices.ecourts.gov.in/hcservices/>

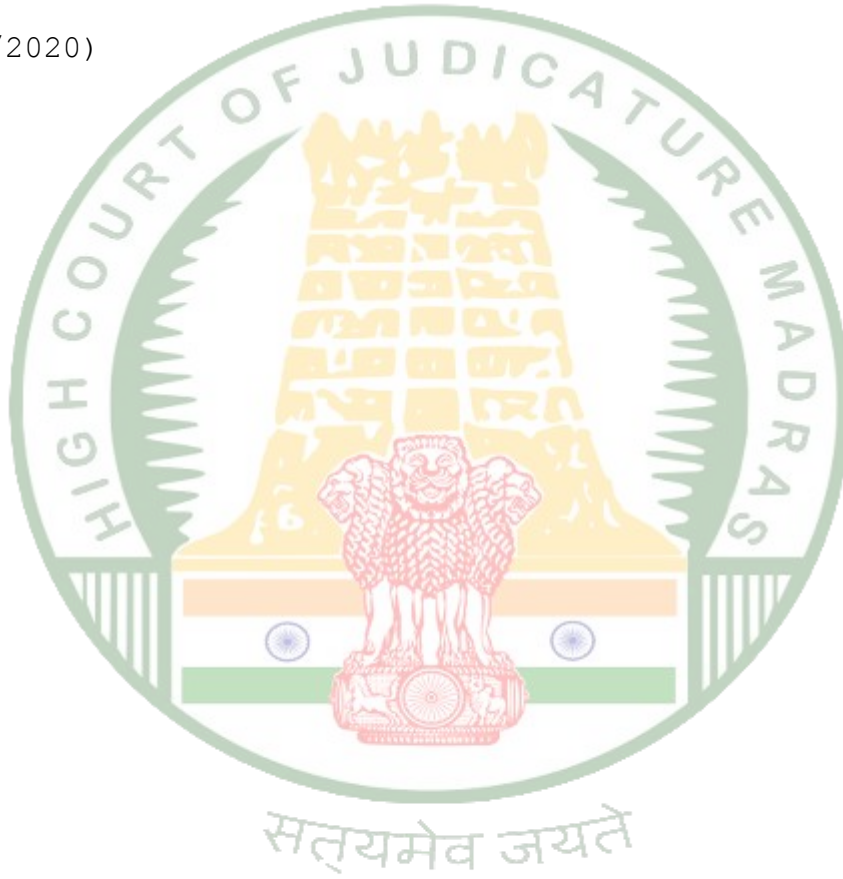
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Kamadevan, Advocate SR.No.273

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.414

C.M.A.No.1843 of 2016 and
C.M.P.No.13529 of 2016

RJI (CO)
GMY (28/08/2020)



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